



# Federal Housing Finance Agency

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September 24, 2009

Honorable Alan Grayson  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Grayson:

This responds to your letter of September 9, 2009, to Acting Director DeMarco concerning the advancement of legal fees to former officers and directors by Fannie Mae in conservatorship. The Director asked me to reply to you as this involves a matter currently in litigation. As you know, Fannie Mae and others are defending against shareholder claims in a federal securities lawsuit filed in 2004. Fannie Mae has advanced the legal fees to individual defendants in that action pursuant to a contractual indemnification agreement. Such agreements are common business practice, are part of many state corporation laws and are included in the bylaws of companies with set procedures and conditions.

After careful consideration and in its judgment of relevant facts and law, the Federal Housing Finance Agency, as conservator of Fannie Mae, determined that compelling reasons existed at the time the decision was reached not to repudiate the indemnification contracts of Fannie Mae executives, including those of Mr. Raines, Mr. Howard, and Ms. Spencer.

The legal fees incurred by these former executives arise out of their defense of shareholder claims brought against them in a private civil action as co-defendants with Fannie Mae, rather than claims made by the Government. The bylaws of Fannie Mae and the contracts of these individuals provide that legal fees will be advanced in a case such as this. Nevertheless, the bylaws and contracts also ensure that these fees can and will be recovered if there is a finding of fraud or similar dishonest conduct by these individuals in the case. No such finding was made in the administrative action earlier brought by FHFA's predecessor agency, which resolved all claims between the parties and did not remove indemnification payments. No finding of fraudulent conduct or other conduct covered by the statute has been made as of yet by the district court in the pending securities litigation.

In the Conservator's judgment, refusal to honor the existing fee agreements—in the absence of any adjudication of dishonest conduct—would have created the possibility of additional and expensive litigation. Further, in the Conservator's judgment, at the time the decision was made, the

potential financial harm to the conservatorship of attempting to cut off legal fees to individual defendants in a case in which Fannie Mae is a codefendant outweighed the potential savings from a reduction of legal costs.

I hope that this information is responsive to your questions. I may be reached at 202 414 3788.  
With all best wishes, I am

Sincerely,

A handwritten signature in black ink, reading "Alfred M. Pollard". The signature is written in a cursive style with a long, sweeping tail.

Alfred M. Pollard  
General Counsel